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HEARING DATE & TIME:
DECEMBER 7, 2022 AT 9:00 AM

Anne Penachio, Esq.

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re: : CHAPTER 13
: Case No.: 17-23821 (CGM)
: Debtor. :
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**THE DEBTOR'S OPPOSITION TO THE MOTION OF M&T BANK AS SERVICING
AGENT FOR STATE OF NEW YORK MORTGAGE AGENCY FOR RELIEF FROM
STAY WITH RESPECT TO THE HOME AT 4 AGNEW FARM ROAD, UNIT C2, NORTH
CASTLE, NY 10504**

**TO: THE HONORABLE CECELIA G. MORRIS
UNITED STATES BANKRUPTCY JUDGE**

KIMBERLY KEATING TASSONE, by and through her counsel, Penachio Malara LLP, submits this opposition to the motion of **M&T BANK AS SERVICING AGENT FOR STATE OF NEW YORK MORTGAGE AGENCY** ("M&T") to vacate the stay with respect to the home at 4 Agnew Farm Road, Unit C2, North Castle, NY 10504 (the "Home") and respectfully sets forth as follows:

1. On or about November 27, 2017, the Debtor filed a voluntary petition for relief under Chapter 13 of Title 11 of the United States Code, as amended (the "Bankruptcy Code") with the Clerk of this Court.
2. The Debtor's financial reverses was precipitated primarily by business setbacks associated with the economy and family health issues. The Debtor resides at the Home with her husband and children, including an infant.

3. The Debtor owns the Home jointly with her non-debtor spouse. M&T did not submit an appraisal in support of its motion. Instead, it relies on the Debtor's schedules which were filed approximately 5 years ago and asserts that the Home worth at least \$500,000.00. The Debtor believes that the Home is worth significantly more than in 2017.

4. M&T holds or services the mortgage on the Home. According to M&T, the unpaid balance due is approximately \$156,869.40. It is noteworthy that this amount is significantly less than the amount due at the time of the filing, which was \$215,524.72 according to M&T.

5. The Debtor is obligated to make monthly payments in the amount of approximately \$1,322.39. According to the Debtor, she is current with payments.

6. After reviewing a payment history supplied by M&T, the Debtor realized that she may have missed two (2) payments (one in 2019 and one in 2020). A copy of the payment history is annexed hereto as Exhibit A. It is submitted that the history reflects that the Debtor made regular payments to M&T.

THE MOTION SHOULD BE DENIED

7. In support of its motion, M&T alleges that there is "cause" to vacate the stay under 11 U.S.C. § 362(d)(1) due to the Debtor's alleges failure to make payments.

8. The Debtor is on track to remain current with payment. The Debtor has since made good faith efforts to cure the arrears. According to recent conversations with the Debtor, she has made her October and November payment. A screen shot of the October and November payments made are annexed hereto as Exhibit B. While speaking with a representative of M&T, it was explained to the Debtor that M&T would be sending our firm the paperwork reflecting what is still owed as they could not represent same to the Debtor. The Debtor has advised the undersigned that she is in a position to catch up with past payments and remain current. It is submitted that the arrears alleged by M&T are relatively minor.

9. M&T is more than adequately protected by the significant equity cushion in the in the Home which the Debtor believes exceeds \$300,000.00 based upon the value in her schedules (which is 5 years old and do not reflect the general market increase of single family homes).

10. Based upon the foregoing, the motion should be denied or conditionally granted subject to the Debtor entering into a conditional order.

LEGAL FEE REQUEST SHOULD BE DENIED

11. M&T's request for an award of legal fees of \$1,050.00 and expenses of \$188.00 should be denied. M&T has not set forth a valid basis for such an award.

WHEREFORE, the Debtor respectfully requests that M&T's motion be denied or granted conditionally subject to the Debtor paying what is actually due post-petition.

Dated: White Plains, New York
November 29, 2022

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By: /s/ Anne Penachio
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